

STATE OF VERMONT
HUMAN SERVICES BOARD

In re)	Fair Hearing No. 15,262
)	
Appeal of)	

INTRODUCTION

The petitioner appeals a decision by the Department of Social Welfare requiring her to repay an overpayment of Food Stamps by reducing the amount of her ongoing benefits. The issues are whether the petitioner or the Department was at fault in causing the overpayment and whether the Department can initiate recoupment of an overpayment amount even when the recipient is not at fault for the overpayment.

FINDINGS OF FACT

The petitioner has been a Food Stamp recipient off and on for the past several years. In April, 1995, the petitioner underwent a periodic review of her eligibility. She informed her caseworker that she was then unemployed, but that she might resume working at a seasonal job she had previously held at a local country club. Based on her income at that time the Department found the petitioner's six-person household eligible for Food Stamps of \$333 a month.

The petitioner returned to work at the country club in July, 1995. She maintains that shortly after she began working she called her worker two times and left voice mail messages on his phone that she had returned to work at the

country club, but that neither call was returned. The petitioner made no further attempt to contact the Department.

The petitioner continued receiving Food Stamps in August, September, and October, 1995. In October she met with her worker as part of the regular six-month recertification process. At that time, she reported her earnings, and her Food Stamps were terminated effective November 1, 1995.

In April, 1996, the Department notified the petitioner that she had received \$757 in Food Stamps from August through October, 1995, for which she was not eligible. The petitioner did not appeal this decision, and still does not dispute either the fact of or the amount of that overpayment.

The petitioner did not receive Food Stamps from November, 1995, through October, 1997. In November, 1997, she reapplied for Food Stamps, and the Department determined that she would have to repay the overpayment by having her ongoing benefits reduced by ten percent. The petitioner appealed this decision because she feels the overpayment was caused by the Department's failure to act on the information she left by phone message to her worker in July, 1995, and that she should not be held liable for its recoupment.

The petitioner's testimony regarding her calls to the Department was credible. However, it is also highly

unlikely that her worker, who is competent and experienced, would have failed to act on those messages. Although the worker testified that he could not specifically recall any problems with his office's voice mail system at that time, in light of the petitioner's credible testimony the possibility of equipment failure cannot be ruled out.

Even in the above scenario, however, the question of fault is not fully resolved. The Department maintains that the petitioner knew, or should have known, that her working would affect her receipt of Food Stamps, and that even if she made the phone calls to her worker, her failure to follow up further was her "inadvertent error". As discussed below, however, due to relatively recent changes in the regulations, the issue of "fault" has no practical bearing on the Department's decision to recoup the overpayment by reducing the petitioner's ongoing benefits by ten percent.

ORDER

The decision of the Department is affirmed.

REASONS

Under the Food Stamp regulations, the Department is required to "establish a claim against any household that has received more Food Stamp benefits than it is entitled to receive." F.S.M. § 273.18(a). "A claim shall be handled as an administrative error claim if the over issuance was

caused by State agency action or failure to take action..."

F.S.M. § 273.18(a)(2). A state agency is required to "take action to establish a claim against any household that received an over issuance due to an...administrative error if . . . [a] state agency incorrectly computed the household's income or deductions, or otherwise assigned an incorrect allotment . . ." so long as not more than twelve months have elapsed between the month the over issuance occurred and the month the state agency discovered the error. F.S.M. § 273.18(b)(2)(ii). If administrative error occurred, the size of the Department's claim must equal the difference between what the household should have received and what the household was actually allotted. F.S.M. § 273.18(c)(1)(ii).

Effective January 24, 1997, the Department became required to initiate collection actions against all households who were overpaid due to administrative error (unless it is a non-fraud claim of less than \$35). F.S.M. § 273.18(d)(1)(i)(A). Collection actions are initiated in administrative error claims by a demand letter. F.S.M. § 273.18(d)(3)(iii). If the household is continuing to receive Food Stamps, the letter must notify it that the amount of the recoupment is ten percent of the household's ongoing monthly allotment or \$10 per month, whichever is greater. F.S.M. § 273.18(g)(4)(ii).

Under rules in effect prior to January, 1997, the Department could involuntarily reduce a household's ongoing benefits to recoup an overpayment only in cases of household error, but not in cases of administrative error. However, nothing in the regulations indicates that the recently-instituted 10 percent recoupment in administrative error cases is limited to overpayments that occurred after the effective date of the regulation (January 24, 1997). See Fair Hearing No. 15,110. The ten percent recoupment rate now applies in cases of either inadvertent household error or administrative error.

It is, therefore, of no consequence to the amount of the petitioner's ongoing benefits whether she or the Department is determined to have been at fault in the overpayment of Food Stamps that occurred in 1995. Although the facts of this case would raise an issue of whether the petitioner's two phone messages to her worker were sufficient to conclude that the overpayment was the Department's fault, it is an issue that need not be decided.

Either way, the petitioner is liable to repay the overpayment through a ten percent reduction in her ongoing Food Stamps.

Inasmuch as the Department's decision to recoup the overpayment of \$757 through a ten percent reduction in the petitioner's ongoing Food Stamps is in accord with the pertinent regulations it must be affirmed. 3 V.S.A. 3091(d)

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